

WEINER LESNIAK LLP

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***Attorneys for Defendants/Third-Party Plaintiffs,
Midlantic Healthcare, Inc. and Stephen Di Tomasso***

Our File No.: 85711

F:\WP-DATA\INS\MATTERS\85711 Motion to Approve 3rd party settlement 1-18-07 rab.doc

Return Date: February 5, 2007
9:00 a.m.

ELAINE L. CHAO, Secretary of Labor, United
States Department of Labor,

Plaintiff,

vs.

NEW JERSEY LICENSED BEVERAGE
ASSOCIATION, INC.; MELVIN GITLER;
ROBERT SCERBO; PHIL CITTA; WILLIAM
CLEARY; ROBERT MARCIANI; JOSEPH
ARDIRE; RICHARD BELLSHOT; JAMES
HILL; MICHAEL MARSH; LEWIS
ROTHBART; FRANK ZANOTTI, ANN
SMULEWICZ; RANDY NORMAND; MARY
ROENICK; STEPHAN DI TOMASSO;
MIDLANTIC HEALTHCARE, INC.; NEW
JERSEY LICENSED BEVERAGE
ASSOCIATION EMPLOYEE WELFARE
BENEFIT PLAN,

Defendants.

and

STEPHAN DI TOMASSO; MIDLANTIC
HEALTHCARE, INC.

Third-Party Plaintiffs

vs.

HORIZON HEALTHCARE SYSTEMS;
NATIONAL BENEFITS ADMINISTRATORS;
INTERNATIONAL RISK CONSULTANTS;
IMMS/STARLINE GROUP, XYZ CORPS 1-10
(said names being fictitious) and JOHN
DOES 1-10 (said names being fictitious),

Third-Party Defendants.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Civil Action No. 04-5692 (JWB)

**NOTICE OF MOTION TO APPROVE
THIRD-PARTY SETTLEMENT**

To: Louis DeBernardo, Esq.
United States Department of Labor
Office of the Solicitor
201 Varick Street, Room 983
New York, New York 10014-9528

Richard S. Zackin, Esq.
Gibbons, Del Deo, Dolan,
Griffinger & Vecchione
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Calo Agostino, PC
14 Washington Place
Hackensack, N.J. 07601

SIRS/MADAM:


PLEASE TAKE NOTICE that on Friday, February 5, 2007, at 9:00 in the forenoon,
or as soon thereafter as counsel can be heard, the undersigned, attorneys for the
defendants/third-party plaintiffs, Stephen Di Tomasso and Midlantic Healthcare, Inc.,

shall move this Court, located at Clarkson S. Fischer Federal Building and U.S. Courthouse, 402 E. State Street, Trenton, New Jersey 08608, for an Order approving the third-party settlement in this matter.

PLEASE TAKE FURTHER NOTICE that in support of this motion, the defendants/third-party plaintiffs shall rely upon the accompanying Certification of Ronald A. Berutti.

PLEASE TAKE FURTHER NOTICE that oral argument is respectfully requested should the Court be inclined to hear argument on all related motions.

WEINER LESNIAK LLP
Attorneys for Defendants/Third-Party Plaintiffs,
Midlantic Healthcare, Inc. and
Stephen Di Tomasso

By: 
Ronald A. Berutti
A Member of the Firm

Dated: January 19, 2007

WEINER LESNIAK, LLP
629 Parsippany Road
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Phone: (973) 403-1100 Fax: (973) 403-0010
Attorneys for Defendants/Third-Party Plaintiffs,
Midlantic Healthcare, Inc. and Stephan Di Tomasso

ELAINE L. CHAO, Secretary of Labor, United
States Department of Labor,

Plaintiff,

vs.

NEW JERSEY LICENSED BEVERAGE
ASSOCIATION, INC.; MELVIN GITLER;
ROBERT SCERBO, PHIL CITTA; WILLIAM
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JERSEY LICENSED BEVERAGE
ASSOCIATION EMPLOYEE WELFARE
BENEFIT PLAN;

Defendants.

and

STEPHAN DI TOMASSO, MIDLANTIC
HEALTHCARE, INC.

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(said names being fictitious) and JOHN
DOES 1-10 (said names being fictitious),

Third-Party Defendants.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Civil Action No. 04-5692 (JWB)

**CERTIFICATION OF
RONALD A. BERUTTI**

RONALD A. BERUTTI, of full age, duly declares as follows:

1. I am a member of the law firm Weiner Lesniak LLP, attorneys for the defendants/third-party plaintiffs Stephen Di Tomasso and Midlantic Healthcare, Inc. I am fully familiar with the facts set forth below. I make this Certification in support of the Notice of Motion to Approve Third Party Settlement.

2. On November 28, 2006, settlement was reached among all parties to this action. Pursuant to the settlement between Midlantic Healthcare, Inc. and the Department of Labor, Midlantic would be responsible for payment of a total of \$600,000.00.


3. However, the basis for that figure was that \$450,000.00 would be paid directly on behalf of Midlantic, \$100,000.00 would be paid to Midlantic on behalf of third-party defendant, Horizon Healthcare Systems, and \$50,000.00 would be paid to Midlantic on behalf of third-party defendant National Benefits Administrators, so that the total of \$600,000.00 would be in place to pay the Department of Labor.

4. Timely payment by these third party defendants was a material consideration of the overall settlement, without which there would have been no settlement.

5. Confirmation of this is set forth in the Transcript of Settlement Conference before Honorable John J. Hughes, United States Magistrate Judge, the pertinent page of which is attached hereto as **Exhibit A**.

6. In order to memorialize the settlement, we request entry of the Order attached hereto as **Exhibit B**, which will satisfactorily lead to conclusion of the third-party matter and payment to the Department of Labor.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Ronald A. Berutti

Dated: January 19, 2007

EXHIBIT A

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

| | | |
|-----------------------------|---|--------------------------|
| Elaine L. Chao, | . | Docket #CV-04-5692 (JAP) |
| Plaintiff. | . | |
| V. | . | United States Courthouse |
| | . | Trenton, New Jersey |
| | . | November 28, 2006 |
| New Jersey License Beverage | . | |
| Association, Inc., et al., | . | |
| Defendant(s). | . | |

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TRANSCRIPT OF SETTLEMENT CONFERENCE
BEFORE THE HONORABLE JOHN J. HUGHES
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

| | |
|--------------------|---|
| For The Plaintiff: | Louis Debenardo, Esq. Office of the Solicitor U.S. Department of Labor 201 Varick Street-Room 707 New York, NY 10014 |
| | Patricia M. Rodenhausen, Esq. Regional Solicitor U.S. Department of Labor 201 Varick Street-Room 707 New York, NY 10014 |
| For The Defendant: | Richard S. Zackin, Esq. Gibbons Del Deo Dolan Griffinger & Vecchione, PC One Riverfront Plaza Newark, NJ 07102 |
| For Starline: | Adam M. Smith, Esq. Coughlin Duffy, LLP 350 Mount Kemble Avenue Morristown, NJ 07962 |

1 For Midlantic: Ronald A. Berutti, Esq.
2 Weiner & Lesniak, LLP
629 Parsippany Road
Parsippany, NJ 07054
3
4 For Stephan DeTimaso: George G. Campion, Esq.
Weiner & Lesniak, LLP
629 Parsippany Road
Parsippany, NJ 07054
5
6 For Horizon: Robert A. Baxter, Esq.
Kelley, Wardell & Craig
7 Annin & Baxter, LLP
41 Grove Street
8 Haddonfield, NJ 08033
9 For National Benefits: Beverly M. Wurth, Esq.
Administrators, Inc. Calo & Agostino
10 The Bank House
14 Washington Place
11 Hackensack, NJ 07601
12 Audio Operator: Denis Glynn
13 Transcribing Firm: Writer's Cramp, Inc.
6 Norton Rd.
14 Monmouth Jct., NJ 08852
732-329-0191
15
16 Proceedings recorded by electronic sound recording, transcript
produced by transcription service.
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Writer's Cramp, Inc.

Certified Court Transcribers

732-329-0191

1 MR. DEBENARDO: One thing, Your Honor. Could you
2 give us a date for filing our papers, the judgment?

3 THE COURT: January 12th, returnable February 5th. I
4 think that's the date I gave Mr. Zackin, right?

5 UNIDENTIFIED SPEAKER: It is, Your Honor.

6 THE COURT: Yes, great, thank you.

7 MR. BERUTTI: Just a couple things, Your Honor. The
8 \$600,000 payment is made on behalf of Midlantic, not the
9 Midlantic Defendants. Mr. DeTimaso is not taking
10 responsibility for any of that payment.

11 THE COURT: Right, I understand that.

12 MR. BERUTTI: The \$600,000, although we recognize
13 that the \$600,000 is coming from our client, is broken down 450
14 from Midlantic, 100 from Horizon, and 50,000 from NBA. Those
15 amounts will be paid by Horizon and NBA in time to pay
16 Midlantic Defendants. I think that everyone's in agreement
17 with that. In time to pay the Department of Labor.

18 The asset affidavit issue, Midlantic -- we just need to
19 get, again, subject to client consent, just like Mr. Zackin --

20 THE COURT: Yes, I understand.

21 MR. BERUTTI: We don't anticipate a problem. But if
22 there is we'll let Your Honor know, and that's it.

23 THE COURT: Okay. And my understanding from the
24 third-party Defendants is that you have settled with
25 third-party Plaintiffs by way of contribution to the overall

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732-329-0191

EXHIBIT B

WEINER LESNIAK LLP
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Parsippany, New Jersey 07054-0438
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Attorneys for Defendants/Third-Party Plaintiffs,
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Our File No.: 85711

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Defendants.

and

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(said names being fictitious) and JOHN
DOES 1-10 (said names being fictitious),

Third-Party Defendants.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Civil Action No. 04-5692 (JWB)

**ORDER APPROVING SETTLEMENT
OF THIRD-PARTY COMPLAINT**

THIS MATTER, having been opened to the Court on Notice of Motion to Approve Third-Party Settlement filed by Weiner Lesniak LLP, attorneys for defendants/third-party plaintiffs Midlantic Healthcare, Inc. and Stephen DiTomasso, and the Court having reviewed the papers submitted in support thereof, and any submitted in opposition thereto, and having heard oral argument, and having determined said settlement to be in the best interests of all parties and the Plan Participants of the New Jersey License Beverage Association Health Benefits Plan, and for good cause shown

IT IS ORDERED that the third-party action against all parties filed by and on behalf of Midlantic Healthcare, Inc. and Stephen DiTomasso be, and hereby is, approved as follows:

1. At least two (2) weeks before the date on which monies become due to the Department of Labor from Midlantic Healthcare, Inc. under their Partial Consent Judgment, Horizon Healthcare, Inc. shall make payment of readily available funds in the amount of \$100,000.00 to Weiner Lesniak LLP Attorney Trust Account, and National Benefits Administrators shall make payment of \$50,000.00 in readily available funds to Weiner Lesniak LLP Attorney Trust Account as their full contribution toward resolution of all claims in this matter;
2. Upon clearance of the funds as aforesaid, Midlantic Healthcare, Inc. shall forward a Release to each of Horizon Healthcare, Inc. and National Benefits Administrators;
3. This Order does not become effective until entry of a Partial Consent Judgment between the Secretary of Labor, Midlantic Healthcare, Inc. and Stephen DiTomasso, and entry of a Bar Order in a form satisfactory to Midlantic Healthcare, Inc., Stephen DiTomasso, National Benefits Administrators, and Horizon Healthcare, Inc., as related to third-party actions arising from the New Jersey Licensed Beverage Association Health & Welfare Benefits Plan.

Dated: Trenton, New Jersey
February __, 2007

ENTER:

Honorable Joel A. Pisano, J.S.C.